



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Captain Steven F. Triplett, USA -  
Dependent Travel - Overseas Stations

File: B-228964

Date: September 14, 1988

### DIGEST

1. A member who was transferred to an overseas duty station did not have custody of his minor child by a prior marriage at the time of his transfer. Thereafter, the member gained custody of the child, and he seeks reimbursement for the dependent's travel to his overseas location. Reimbursement is allowed. Under the provisions of paragraphs U5203-B11, U5203-B18 and U5215-I of volume 1, Joint Federal Travel Regulations, a dependent child may be transported at government expense to a member's overseas location between transfer assignments so long as the purpose is to change the dependent's permanent residence. Chief Warrant Officer Michael W. Pennington, USA, B-227594, June 8, 1988.

2. A member was transferred to an overseas duty station and acquired custody of his minor child by a prior marriage between transfer assignments, but with less than 1 year of duty remaining at that station. His right to transport that minor child to his overseas location at government expense for permanent residency purposes is governed by paragraph U5203-B18 of the Joint Federal Travel Regulations, which specifically authorizes that travel when a member acquires custody of a dependent child between overseas transfer assignments. Chief Warrant Officer Michael W. Pennington, USA, B-227594, June 8, 1988.

### DECISION

This decision is in response to a request from the Chief, Travel Policy Branch, Office of the Director of Finance and Accounting, Department of the Army. It concerns the entitlement of Captain Steven F. Triplett, USA, to be reimbursed for dependent travel which occurred nearly

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2 years after his transfer.<sup>1/</sup> We conclude that the member is entitled for the following reasons.

#### BACKGROUND

Captain Triplett was transferred from Fort McClellan, Alabama, to Fort Greely, Alaska, effective May 20, 1985. His orders authorized concurrent travel by his spouse and two dependent children, one of whom, Stephanie, was a daughter by a former marriage.

Stephanie did not travel to Fort Greely with Captain Triplett as was anticipated. While the record is silent as to the reason, it appears that her failure to travel at that time was associated with her custody status under the member's 1981 decree of divorce from Stephanie's mother.

On March 12, 1987, Stephanie traveled to Fort Greely, Alaska. On the following day, Captain Triplett sought reimbursement for his out-of-pocket airfare expenses based on his 1985 orders. His entitlement was challenged on the assertion that his earlier transfer orders were outdated. Captain Triplett thereafter presented new orders dated March 18, 1987, as a further amendment to his earlier orders, deleting the reference to Stephanie's travel as concurrent and substituting approval of such travel as deferred. To further support entitlement, he also presented a copy of a court-approved custody agreement dated April 7, 1987, stating that the change of custody was effective March 10, 1987.

Based on the above and the fact that Captain Triplett received another permanent change-of-station assignment in May 1987, the Army asks the following questions:

1. Does the requirement that 12 months must remain in an overseas tour of duty (paragraph U5203-B 15 of volume 1 of the Joint Federal Travel Regulations (JFTR)) apply to the travel and transportation allowance of dependent children after a change in legal custody (paragraph U5215-I of the JFTR)?

2. For travel purposes, is the effective date of the court order the date the custody agreement was signed, or is it the date Captain Triplett was permitted to take custody and control of his daughter?

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<sup>1/</sup> This request has been assigned Control No. 87-14 by the Per Diem, Travel and Transportation Allowance Committee.

## RULING

Under the provisions of 37 U.S.C. § 406(a)(1) (1982), a member of a uniformed service who is ordered to make a change of permanent station is entitled to transport his dependents at government expense. Regulations issued in implementation of those provisions are contained in chapter 7, volume 1 of the Joint Travel Regulations (JTR), as superseded by chapter 5 of the JFTR, effective January 1, 1987. Therefore, since the events in the present case are in transition through the supersession date and since the governing regulatory provisions are unchanged, all primary references will be to the JFTR provisions.

Paragraph U5203-B11 of the JFTR (formerly 1 JTR, M7000-13, change 396, February 1, 1986), authorizes the transportation of dependents incident to a transfer except:

"to a place at which they do not intend to establish a permanent residence . . . ."

Additionally, JFTR para. U5203-B18 (formerly 1 JTR, M7000-20) excludes reimbursement for travel by dependent children if they are not under the legal custody and control of the member on the effective date of his transfer orders. However, that paragraph goes on to state that if legal custody or control of dependent children changes after the transfer's effective date, JFTR para. U5215-I controls. That latter provision (formerly 1 JTR, M7016) provides, in part, that when an original decree or agreement is changed and the member is granted custody of a dependent child, the member is entitled to travel and transportation allowances on the child's behalf subject only to the monetary limitation prescribed in JFTR para. U5218.

Thus, under the above regulations, a member is entitled to travel and transportation allowances for dependent children between permanent change-of-station assignments if the member acquires custody and control over them, so long as the purpose for the dependent's travel is to change the dependent's permanent residence.

In our decision in CW2 Michael W. Pennington, USA, B-227594, June 8, 1988, we considered a situation similar to the present case. In that case we ruled in part that where an adult has been granted the care, custody and control of a minor child, a decision that the child shall reside with the adult makes that residence the child's permanent residence for travel reimbursement purposes.

Therefore, our answer is no to question 1 which asks whether the member must have 1 year remaining in his overseas tour of duty (JFTR para. U5203-B15) in order for dependent travel to be at government expense in cases involving changes in custody between transfer assignments. That provision relates only to deferred travel of a dependent who is under the legal custody and control of a member on the effective date of his overseas transfer assignment. Since paragraph U5203-B18 specifically addresses situations involving the establishment of custody in the member between transfer assignments, that provision controls. Pennington, supra.

Question 2 asks whether a court-approved custody change may retroactively serve as a valid basis for dependent travel reimbursement. We do not consider the action taken by the court here to be retroactive. As part of the judicial proceedings involving the divorce of Stephanie's parents, such disagreements as there previously may have been regarding her custody had been resolved by a court-appointed master in 1981. In January 1987, the member sought to modify the prior custody arrangement. That matter was again referred to a master, and effective March 9, 1987, the master certified that both the member and his former spouse would be Temporary Joint Managing Conservators of Stephanie, but that the member would determine her domicile. It is our view that since the new agreement represented a change from the order of the court entered into on May 11, 1981, the 1987 court order in the case simply ratified for official record purposes the changes which the parties already agreed to under court supervision.

In conclusion, we hold that Captain Triplett may receive travel and transportation allowances for Stephanie's travel to Fort Greely, Alaska.

*for*   
Comptroller General  
of the United States